

SANDRA C. MAY)
 Claimant)
 VS.)
) Docket No. 258,416
SEVILLE HOME, L.L.C.)
 Respondent)
 AND)
)
TIG PREMIER INSURANCE COMPANY)
 Insurance Carrier)

1. On March 27, 2000, claimant tripped on a pallet while unloading store fixtures for the respondent. The incident arose out of and in the course of claimant's employment with respondent.

2. At the time of the incident, claimant felt some pain but she continued to work and finished her shift. Claimant did not report the incident to respondent as she thought she had merely pulled a muscle and believed that over-the-counter Motrin would alleviate her symptoms.

3. Claimant began working for respondent the week before the March 27, 2000 incident. After the incident, claimant continued working for several days until she was terminated.

4. After being terminated, claimant consulted an attorney. On May 10, 2000, that attorney wrote respondent regarding several legal matters, including a demand for workers compensation benefits and medical treatment for claimant's back.

5. Before the March 27, 2000 incident, claimant had experienced back problems following two automobile accidents. Following the most recent accident, which claimant believes occurred in 1995, claimant received chiropractic treatment. But, according to claimant, she had not consulted a doctor concerning her back for more than a year before the March 27, 2000 incident.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that the injured worker's position on an issue is more probably true than not when considering the whole record.²

3. The Workers Compensation Act requires a worker to provide the employer timely notice of a work-related accident or injury. The Act reads:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.³

4. The Appeals Board affirms Judge Sample's conclusion that claimant had just cause that extended the time to provide respondent notice of the accident and back injury. These facts demonstrate the difficulty workers sometimes experience in determining whether their aches and pains are the result of a work-related injury, the natural and probable sequelae of a preexisting condition, or merely soreness associated with their work. Under these facts and circumstances, claimant had just cause that extended the notice deadline to 75 days following the incident. Therefore, the notice of the accident contained in the May 10, 2000 letter was timely.

5. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Appeals Board affirms the October 4, 2000 preliminary hearing Order entered by Judge Julie A. N. Sample.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Kip A. Kubin, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-520.

⁴ K.S.A. 1999 Supp. 44-534a(a)(2).